IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.119 OF 1994

Walmik Gulchand Borale
Age 32 years,
Occupation: Service
Residing at Nardane,
Taluka Malegaon,
Dist. Nashik. .. Appellant
(Org.Accd.No.1)

Vs.

The State of Maharashtra .. Respondent

Mr. U.K. Dhakephalkar h/f Mr. P.K. Dhakephalkar for appellant.

Smt. V.R. Bhosale, APP for Respondent-State.

CORAM : S.S. PARKAR & S.R. SATHE, JJ.

Date : September 14, 2004.

ORAL JUDGMENT (PER S.S. PARKAR,J.) :

1. This appeal has been filed challenging the order of conviction and sentence recorded against the appellant-original accused no.1 by the Addl. Sessions Judge, Malegaon, Nashik convicting him for offence of murder of his own wife under Section 302 of IPC and sentencing him to imprisonment for life and to pay a fine of Rs.1000/- in default RI for 3 months in Sessions Case No.62 of 1990.

2. The prosecution case briefly narrated is as under:-

The incident took place on 11/2/1990 in village Nardane, Taluka Malegaon, District Nashik when Shobha, wi fe of appellant, died because of the fatal injury which she had received on her head. Shobha was married to the appellant about 12 years back. She was residing with her husband and three children in village Nardane along with her parents-in-law in their ancestral house. Appellant was doubting Shobha's character suspecting that she had illicit relations with one Arjun of that village. Appellant used to beat her very often under the influence of liquor. On 11/2/1990 PW 1 Ratan Magre, the father of Shobha, received information from one Gangaram of Nardane that Shobha had fallen into the well and was in serious condition. Since it was night time, next morning he left from his residence at Khadki along with his relations and went to Nardane. When he went to the house of the appellant many persons had assembled there. When the persons assembled there started crying, PW 1 realised that his daughter must have died. When he saw the dead body of Shobha in the house of the accused, he noticed injuries on her body.

Blood was also seen oozing from her left ear. Seeing the injuries on the body of Shobha, he doubted whether Shobha had really died due to drowning in the well. He then went to Malegaon Taluka Police Station and lodged his report which is Exh.25. In the meantime, PW 2 Sheshpalsing Rajput, Police Patil of the village, had also sent his report to the Malegaon Taluka Police Station after keeping village Kotwal in the house of the accused to watch the dead body on the night of the incident itself. That report is produced at Exh.27. The police, therefore, had gone to the house of the accused and after drawing inquest panchanama on the dead body, the dead body was sent for post-mortem examination. The inquest panchanama as well as post-mortem report indicate that the deceased had received seven injuries on her person, including fracture of her skull. The crime was registered and the statements of the witnesses were recorded. Appellant, who is the husband of the deceased Shobha as well as his father were arrested. The clothes from the persons of both the accused were seized under panchanama. While in custody, appellant made a statement before the panchas and volunteered to show the place of offence. He led the police and the panchas to his own field from where blood stained earth, locks of hair, spade, lady’s footwear were

seized so also the pieces of bangles. Clothes of the deceased which included saree and blouse were also seized under the panchanama. The police also attached bullock-cart of the accused and seized blood stained wooden plank from the bullock-cart. All the seized articles, which were stained with blood were sent to C.A. for examination. After the completion of the investigation, charge-sheet came to be filed and the case was committed to the Sessions Court.

3. Before the Sessions Court, charges were framed for offence under Section 302 as well as for offence under Section 201 both read with Section 34 of IPC against the appellant and his father - Gulchand Bala Borale, to which both of them pleaded not guilty.

4. On behalf of the prosecution 11 witnesses were examined. PW 1 is Ratan Magre, the complainant, who is the father of the deceased Shobha. PW 2 is Sheshpalsing Rajput, the Police Patil of the village. PW 3 is Chindha Jat, who acted as panch for inquest panchanama Exh.29. PW 4 is Ramesh Sardar, who acted as panch for recovery of the blood stained chappal and spade etc. from the field of the accused. PW 5 is Vasant Borale, the owner of the neighbouring field. PW 6 is Dr. Abhiman Patil, who had examined Shobha in

the house of the accused and he found her dead with injuries on her person. PW 7 is Dr.Baban Gangurde, who had conducted autopsy on the dead body. PW 8 is Deochand Chavan, who acted as panch for recovery of the clothes from the persons of the accused. The rest of the witnesses i.e. PWs 9 to 11 are Police Sub Inspectors, who had registered the crime, investigated the case and filed the charge-sheet. The defence of the accused is simply of false denial.

5. After considering the entire evidence on record, the Sessions Court acquitted original accused no.2 - father of the appellant, of both the offences with which he was charged for want of sufficient evidence. The Sessions Court, however, though acquitted the appellant - original accused no.1 for offence under Section 201 of IPC, convicted him for offence under Section 302 of IPC and sentenced him as aforesaid. The said order of conviction and sentence recorded against the appellant is impugned in this appeal.

6. After taking us through the evidence of the prosecution witnesses, the learned defence advocate contended that the circumstances brought on record by the prosecution do not form a complete chain and are not sufficient to convict the appellant. He submitted

that appellant is entitled for benefit of doubt. On the other hand, the learned APP argued that the circumstances brought on record led to the only hypothesis of guilt of appellant and, therefore, the appellant was rightly convicted by the trial court, which needs no interference.

7. It is not in dispute that deceased Shobha was married to the appellant and was having three children from the said marriage. It is not in dispute that at the relevant time she was residing with her husband, children and parents-in-law in her matrimonial house in village Nardane, Taluka Malegaon, District Nashik. PW 1 Ratan Magre, the father of Shobha, has deposed that since 2-3 years prior to the death of Shobha appellant used to abuse Shobha and beat her under the influence of alcohol. He has also deposed that appellant was doubting her character and used to allege that she had illicit relations with one Arjun of Nardane. Many times she used to go to his house at Khadki for overnight stay during which visits she used to disclose about the ill-treatment meted out to her by the appellant. According to PW 1 on the night of 11/2/1990 one Gangaram of Nardane had gone and told him that Shobha had fallen into the well and she was serious. Since it was night time, next day morning

along with his relations he went to village Nardane. He saw Shobha in her matrimonial house lying dead with the injuries on her person. He also saw blood oozing out from left ear of Shobha. He, therefore, doubted whether Shobha could have died due to drowning in the well and, therefore, he went to Malegaon Taluka Police Station and lodged his report suspecting that she must have met with homicidal death at the hands of the accused. PW 2 Sheshpalsing Rajput, the Police Patil of Nardane village, has deposed that in the evening of 11/2/1990 he heard from the children who had gone to his house for watching T.V. that appellant had killed his wife and had taken her in the bullock-cart. He, therefore, went to the house of accused persons and saw the dead body. That time Sakharbai, mother of the appellant, told him that when Shobha had gone to the well she fell into the well and died. He sent for village Kotwal and asked him to watch the dead body. He then sent report about the death of Shobha to Malegaon Taluka Police Station on the same night which is Exh.27. When the police came on the scene, inquest panchanam was drawn on the dead body. PW 3 Chindha Jat, who was panch for inquest, has deposed that there was some injury on the rear side of left ear of the dead body. He also noticed injury on the forehead above the eyes of the dead body and her nostrils had

become reddish. He has proved the inquest panchanama Exh.29.

8. Prosecution has also examined PW 6 Dr. Patil, who is resident of Kalvadi. According to him, one Barku Bacchav of Nardane village had gone to call him. He was in Nardane village to see his another patient. Thereafter he was called in the house of the accused. He examined the daughter-in-law of Gulchand Borale i.e. the father of the appellant and he told Gulchand Borale that lady had died. He had noticed blood oozing from one of the nostrils and from one ear of Shobha's dead body. When he asked accused persons as to what had happened to Shobha, accused told him that she had fallen into the well. PW 6 has deposed that while examining the dead body, he did not feel that the clothes on her person were wet. He has stated that both the accused were present at that time in the house. When the dead body was sent for post-mortem examination, PW 7 Dr. Gangurde, who was Medical Officer attached to N.M. Wadia Dispensary, Malegaon, had performed post-mortem on the dead body in the afternoon of 12/2/1990. According to him following seven external injuries were noticed on the dead body of deceased Shobha:-

1. Contusion on face below right eye. 2" x 2".

2. Contusion on left side of face in front of ear 2" x 2".

3. Contusion on left shoulder 2" x 2".

4. Contusion on left parietal, temporal and mortoid area of scalp 4" x 4".

5. Two abrasions right claricular area of chest 1/2" x 1/4" each.

6. Two abrasions on left lateral side of lumber region. 1/2" x 1/4".

7. Two abrasions on right thigh anterior surface 1/2" x 1/2" each.

According to him age of the injuries was within 24 hours and they were caused by hard and blunt object. He further deposed that all the injuries were ante-mortem injuries. He has also noticed following internal injuries:-

1. Haematoma on left parito-temporal region of scalp, 3" x 3".

2. On the skull there was crack fracture of skull of temporal bone extending upward and forward 3" in length.

3. On the brain there was haematoma under dura meter on left parietal and temporal area, 3" x 3" area.

He has deposed that both lungs were congested. Stomach was empty so also bladder. According to him

cause of death was due to head injury. In cross-examination he has deposed that injury no.4 was not possible by mere fall unless there is forceful pushing of an object as against the body. He has further deposed that if one falls simpliciter injury no.1 was possible but simultaneously injury no.5 was not possible. He has further deposed in the cross-examination that fracture of the skull could be due to pointed or blunt object and if a person is hit on his head with the blunt and solid portion of the spade then there could be external injury corresponding to the injury of haematoma.

9. From the above medical evidence and the inquest panchanama, it is manifest that Shobha had met with homicidal death. It is not only difficult but almost impossible to believe that Shobha could have received the injuries on her head due to the fall simpliciter in the well which was having 5 ft. deep water as per the panchanama (Exh.20) of well. That well is not having parapet wall but is having 15 ft. height. It is common knowledge that after the registration of the offence the first step the police take is to go to the place of offence and draw panchanama of scene of offence. That Panchanama was drawn between 12.05 p.m. and 12.45 p.m. on 15/2/1990 only after the accused

showed the place of offence after his arrest. The police had come on the scene on 12/2/1990. At that time the rumour was afloat that Shobha had died due to fall in the well which is on the outskirts of the village Nardane. The said rumour must have been circulated by the accused only as neither the complainant nor the police by that time had come to know that deceased had received homicidal death and that the offence in question was committed in the field of the accused. It was only after the arrest of the accused in the early hours of 13/2/1990 that appellant volunteered to show the place where the offence was committed and led the police and panchas to his own field on 15/2/1990. The memorandum of statement of the appellant is at Exh.31. The appellant-accused led the police and the panchas to his own field which was about 2 km. away from the village Nardane. There was crop of groundnut and a well in the field. There was also farm hut in the field. At the place of offence pieces of bangles were seen lying, which were attached under the spot panchanama Exh.32. The police and panchas also attached lady’s chappal which was having blood stains. They also found a bunch of female hair soaked in blood at the scene of offence. The accused produced one blood stained spade which was concealed in the rear

side of the hut in the stack of sugar-cane. All those articles were seized under panchanama. Police had also attached bullock-cart of the accused from village Nardane under panchanama Exh.33. From the said bullock-cart one wooden plank having blood stains on it was seized.

10. In order to prove the said recovery, the prosecution has led the evidence of PW 4 Ramesh Sardar. The said evidence is also corroborated by PW 10 PSI Deoram Mahale. Prosecution has led the evidence of PW 8 Deochand Chavan, who acted as panch for attachment of the clothes of the accused under panchanama Exh.41. As per the said panchanama, open shirt and payjama of the appellant, which were having stains of blood were attached. The same is corroborated by Investigating Officer PW 10 PSI Mahale. The clothes of the deceased, accused and the articles seized from the farm and the farm hut of the accused so also the blood stained wooden plank seized from the bullock-cart were sent for C.A. examination. As per C.A. report Exh.23 the blood stained earth which was collected from the hut in the farm of the accused and the blouse and saree of the deceased were found stained with blood of group "B". Similarly spade as well as the wooden plank seized from the

bullock-cart of the accused were found stained with blood of group "B". Even the chappal of the left foot which was seized from the farm of the accused was found stained with human blood as per the C.A. report. So far as the clothes of the appellant are concerned, as per C.A. report Exh.22, there was one blood stain of about 0.1 cm. in diameter on the full open shirt and few blood stains of about 0.2 cm. in diameter on payjama were noticed but the elements were disintegrated and, therefore, the origin could not be determined.

11. From the aforesaid evidence, following circumstances have been proved by the prosecution :-

Firstly, through the evidence of PW 1, the complainant, who is the father of deceased Shobha, the prosecution has proved the motive. Accused used to ill-treat deceased Shobha and beat her and used to suspect her character alleging that she had illicit relations with one Arjun of the same village Nardane. Secondly, the information was sent to PW 1 father of deceased Shobha that she had died after falling into the well. No doubt PW 1, the father of deceased Shobha, has not stated that he was told by the accused persons that she had fallen in the well but he was

told by one Gangaram who had gone to inform him on the night of 11/2/1990 that Shobha had fallen into the well and was in serious condition. That information must have, in all probability, been given to PW 1 by Gangaram at the instance of accused persons, who had not only not denied but the defence of the accused is that Shobha had died due to fall in the well which is negatived by the medical evidence on record. Apart from that PW 6 Dr. Patil who is absolutely an independent witness and who had gone to see deceased on the same day of the incident has deposed that when he had asked accused persons what had happened to Shobha they told him that she had fallen into the well. That deposition in the examination-in-chief of the doctor has not been challenged in the cross-examination of the witness. The evidence of PW 6 Dr. Patil shows that from one of the nostrils and one of the ears of Shobha blood was oozing out and the contents of inquest panchanama and the evidence of panch to the inquest also go to show that there were injuries on the head of Shobha. The said evidence negatives the defence or the case of the accused that she had died due to fall in the well. PW 6 Dr. Patil, in his deposition, has stated that he did not notice the clothes on the person of Shobha to be wet. Significantly, when accused was given opportunity to

explain the prosecution case by examining him under Section 313 of Cr.P.C. he denies as false that there were injuries on the dead body of Shobha and some blood was oozing out from her left ear. The appellant has admitted in answer to question no.5 that PW 1, father of Shobha, had doubted that Shobha had died because of the fall in the well. He has denied as false that as per inquest panchanama injury was noticed on the rear side of the left ear of the dead body and there was injury on the forehead above the eyes and her nostrils had become reddish in colour.

12. The evidence of PW 7 Dr. Gangurde shows that there were seven injuries on the head of Shobha, which included fracture of the skull and brain portion was damaged but even that evidence was denied by the appellant as being false. From the cross-examination of PW 7 Dr. Gangurde it is clear that the case of the accused seems to be that deceased Shobha had died because of the fall in the well which is inconsistent with the medical evidence and other evidence on record. Thus, the accused had raised a defence which is apparently false and, therefore, it is also a circumstance which goes against the accused.

13. The next circumstance which goes against the

accused is about the recovery of blood stained spade, blood stained lady's chappal from the place of the incident which is the farm of the accused himself. As per the C.A. report the spade was found stained with blood group "B" which was also the blood found on the clothes of the deceased. Similarly, the lady's chappal which was found in the field was stained with human blood. Even the blood stained earth collected from the hut in the field of the accused was having blood of group "B" which was also the blood found on the clothes of the deceased. Surely, the accused had to explain those circumstances. The recovery of the blood stained spade, which according to the medical evidence could cause the injury on the head of the deceased and the finding of the lady's chappal stained with human blood from the hut in the farm of the accused goes to prove that deceased had died because of the assault on her with spade and the place of offence was the farm of the accused and she had not died due to fall in the well. This also proves the falsity of the defence raised by the accused that Shobha had died due to the fall in the well. The finding of blood of group "B" on the wooden plank seized from the bullock-cart of the accused shows that accused had taken the dead body of Shobha from his farm hut to their residential house in the

bullock-cart. It is not denied by the accused that the bullock-cart belonged to the accused. He has only denied that bullock-cart was seized with blood stains. The dead body of Shobha was found in the residential house of the accused. The deceased was in the custody of the accused. Since the place of offence undoubtedly appears to be the farm hut of the accused and the body was later on brought in the bullock-cart to the residential house of the accused, there can be no doubt that the accused must have brought Shobha's body from his farm hut to his residential house after murdering her. This rules out possibility of any other person having assaulted the deceased in the farm hut in which case the accused would not have quietly brought the dead body to their own house and kept quiet and simply spread the rumour that Shobha had died due to the fall in the well.

14. The accused, therefore, was left with no alternative but to simply deny as false all the circumstances which are put to him in his examination under Section 313 of Cr.P.C. The falsity of the defence raised by the accused and his false denial of the circumstances proved by the prosecution against him without trying to explain the same is an additional circumstance against the appellant.

15. The prosecution has also brought on record the evidence to show that appellant who was working in Chalisgaon Railway Station had an off day on 11/2/1990 i.e. the date of the incident and had already obtained Casual Leave for following two days i.e. 12/2/1990 and 13/2/1990. This also shows that throughout the day of the incident i.e. 11/2/1990 the accused was in the house or in his farm. Of course the accused has not raised the plea of alibi but the prosecution did not leave anything to chance and has led the evidence that on the day of the incident he was having an off day from his duty.

16. Thus, following circumstances proved by the prosecution lead to the only conclusion that it was the appellant-accused who has caused the death of his wife Shobha:-

The deceased Shobha was in the matrimonial house on the date of the incident. The dead body of Shobha was found in the house of the accused. The offence had been committed in the farm hut of the accused and thereafter the dead body was brought from the farm house to the house of the accused in the bullock-cart of the accused which had blood stains. Recovery of

blood stained spade at the instance of appellant-accused which was hidden in the stack of sugar-cane. False defence raised by the accused that Shobha died due to fall in the well. The clothes of the accused were also found stained with blood, though origin could not be determined. But that circumstance also has not been explained by the appellant-accused but he has simply denied it as false. Lastly, absence of any explanation on the part of the appellant-accused under 313 examination but only denying the circumstances against him as false.

17. Reference may be made to some of the decisions of the apex court in this regard. In the case of Mulakh Raj vs. Satish Kumar and ors. reported in **AIR 1992 SC 1175**, the husband was charged with offence of murder of his wife who had died because of the burning. Medical report shows that before the burning of the deceased she was strangulated and the burning was post-mortem and not ante-mortem. In that case the death had taken place in the bed room of the spouse and there was attempt to destroy the evidence of murder by burning the dead body and immediately after the occurrence, the husband had raised false plea of suicide and absence from house. Supreme Court held that above circumstances led to only one conclusion

that it was the husband who alone had committed the offence of murder of his wife and, therefore, setting aside the order of acquittal recorded by the High Court, the accused was convicted. Similarly in the present case the conduct of the appellant is material who had circulated rumour that Shobha had died due to fall in the well, though the medical evidence has clearly established that she had died due to assault on her head with hard and blunt object like spade which was recovered at the instance of the accused, which was also found stained with blood of the group "B" which was found on the clothes of the deceased.

18. Reference may also be made to the decision of the Supreme Court in the case of Sarojini vs. State of M.P. reported in **1993 Cri. L.J. 1648**. That was also a case of murder of wife. In that case though the trial court had convicted mother-in-law and the husband for the offence of murder, the High Court had acquitted the husband. Husband was acquitted by the High Court on the ground that he had gone to other place which was 90 kms. away and, therefore, the prosecution had to prove his presence in the house at the time of the incident. The plea was also raised that wife had committed suicide by burning herself but the medical evidence had established that it was

homicidal death due to strangulation and not suicidal. The dead body was found in the store room and no other person would have access in the said room and the commission of crime was not possible by mother-in-law alone. On the ground that false theory of suicide was raised in 313 statement by the accused, the court held that the husband was also guilty and his conviction recorded by the Sessions Court was restored reversing the order of acquittal recorded by the High Court.

19. Reference may be made to the decision of the Supreme Court in the case of Birbal vs. State of M.P. reported in **(2000) 10 SCC 212.** In that case discovery of the dead body was made at the instance of the accused but initially he had given false information to his own daughter that her mother would return later. The Supreme Court held that false information was an additional link in the chain of circumstances completing the chain. In the present case also the rumour circulated by the accused, as deposed to by PW 6 Dr. Patil and other witnesses, would go to show that accused had falsely circulated the rumour that Shobha had died due to fall in the well. Similarly, in the case of Geetha vs. State of Karnataka reported in **(2000) 10 SCC 72** the Supreme Court has held that in a case of murder based on circumstantial evidence the

false denial by the accused in 313 statement supplies a missing link in the chain of circumstances. That the false plea of defence can be considered as an additional circumstance in a case based on circumstantial evidence was held as far back as in the year 1981 in the case of Shankarlal Gyarasilal Dixit vs. State of Maharashtra reported in **AIR 1981 SC 765**

20. From the aforesaid circumstances we are in no manner of doubt that the prosecution has established the aforesaid circumstances beyond reasonable doubt and those circumstances lead to the only conclusion that it is the appellant-accused who had murdered his wife by assaulting her in his farm and thereafter the dead body was brought to the residence circulating the rumour that she had fallen in the well.

21. In the result, the order of conviction and sentence recorded by the Addl. Sessions Judge, Malegaon, Nashik on 14/1/1994 against the appellant-accused in Sessions Case No.62 of 1990 is confirmed and the appeal is dismissed. The appellant-accused shall surrender to his bail forthwith.

(S.S. Parkar, J.)

(S.R. Sathe,J.)